@))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1024 of 1985

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA
and
HON'BLE MR.JUSTICE D.H.WAGHELA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BANK OF BARODA

Versus

DWARKADAS NAVNITLAL ZAVERI

Appearance:

1. First Appeal No. 1024 of 1985
MR DARSHAN M PARIKH for Appellant No.
MR NK MAJMUDAR for Respondents

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 27/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE A.M.KAPADIA)

1. By filing instant appeal under Section 96 of the Code of Civil Procedure, the appellant - Bank of Baroda, seeks to challenge the judgment and decree dated 31.12.1984 rendered in Special Civil Suit No.29 of 1975 by the learned 4th Joint Civil Judge (S.D.)., Vadodara by which the suit filed by the appellant against the respondents to recover an amount of Rs.2,51,185.85 Ps. came to be dismissed with costs.

2. Today, when the matter is placed for final hearing, Mr. Darshan Parikh, learned advocate for the appellant and Mr. NK Majmudar, learned advocate for the respondents, jointly submitted that after filing of this appeal, the parties have amicably settled the matter outside the Court and in token thereof they have prepared a consent terms in the form of Pursis which is duly signed by the constituted attorney for and on behalf of the appellant - Bank of Baroda as well as all the respondents which has been notorised before the Notary Public, Baroda. They, therefore, urged that since the parties have reached to the settlement, outside the Court, the judgment and decree which is impugned in this appeal may be modified in terms of the settlement pursis by allowing this appeal.

3. As per the said settlement pursis, it is agreed upon by the parties that during the pendency of the suit, the appellant - Bank filed a pursis before the Court that the principal amount was already received and that the outstanding amount was only with respect to interest and costs. It is also agreed between the parties that the Civil Court rejected the suit with respect to the interest and costs against which judgment and decree this appeal is filed and during the pendency of the appeal, against the claim of the appellant bank at Rs.1,31,561/-, the respondents have given on 14.10.2004 a cheque No.770923 dated 14.10.2004 for Rs.1,06,000/- drawn on Bank of Baroda, L.N. Road Branch, Baroda in full and final settlement of the claims of the appellant bank and the appellant bank has received the said amount of Rs.1,06,000/- in full and final settlement of all its claims and dues of the appellant Bank against the respondents.

4. In these facts and circumstances, the learned advocates for the parties have urged that the judgment and decree passed by the learned 4th Joint Civil Judge (S.D.)., Vadodara in Special Civil Suit No.29 of 1975 may be set aside and a decree in terms of the settlement may

be drawn by allowing this appeal.

5. Having heard the learned advocates appearing for the parties and having perused the impugned judgment and decree and the consent terms in the form of pursis which is notarized by the Notary Public, Baroda and which is duly signed by all the concerned parties, we are satisfied that since the principal amount was already received during the pendency of the suit and against the claim of the appellant bank for Rs.1,31,561/- which includes Rs.1,06,000/- towards interest and remaining amount towards costs, the respondents have issued a cheque No.770932 dated 14.10.2004 for Rs.1,06,000/- drawn on Bank of Baroda, L.N. Road Branch, Baroda, on 14.10.2004, towards the full and final settlement of all the claims and dues of the appellant- Bank against the respondents and the appellant has already accepted the said amount, the impugned decree deserves to be modified in terms of the settlement by allowing this appeal.

6. In aforeaid view of the matter, the appeal succeeds and it is allowed in terms of the settlement. The decree is to be modified in terms of the settlement and accordingly modified decree to be drawn. There shall be no order as to costs.

7. The settlement pursis is taken on record of the case.

8. R & P which were called for, shall be returned forthwith to the trial court.

(A.M. Kapadia, J.)

(D.H. Waghela, J.)

(karan)